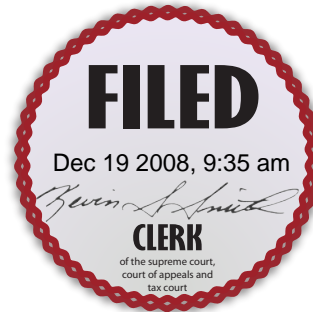


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JOHN C. BOHDAN
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOHNNIE LAMONTE WALKER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 02A03-0808-CR-397

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0702-FA-17

December 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Johnnie L. Walker appeals his sentence, pursuant to a guilty plea, for the following eleven felony offenses: one count of burglary as a class A felony;¹ one count of burglary as a class B felony;² four counts of robbery as class B felonies; and five counts of criminal confinement as class B felonies.

We affirm.

ISSUE

Whether Walker's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

A week before the incidents, Austin Knight and Malcolm Ellis stole pass keys from the main office of an apartment complex in Fort Wayne, Indiana. At approximately 2:40 a.m. on February 19, 2007, Walker, Ellis, Knight, and Antonio Wright used the stolen pass keys to enter the apartment of Beatriz Main-Ward. Main-Ward was asleep when the men entered. Each man was armed with a firearm or pellet gun. The men bound Main-Ward and gagged her with a rag. Then, they ransacked her apartment and stole cash and personal property, including a DVD player, a stereo, and a television. During the episode, Main-Ward was shot at least ten times in her thigh with a pellet/BB gun. One of the men also shot and killed Main-Ward's goldfish.

¹ Indiana Code § 35-43-2-1.

² Ind. Code § 35-42-5-1.

Walker and his accomplices then proceeded to another apartment and gained entry using the stolen keys. Inside, they found Alejandro Perfecto-Pasquel, his brother, Jose Perfecto-Pasquel, Claudia Coronel, and their guest, Megan Witte. Alejandro and Megan were forced to lie on the bedroom floor; Jose was ordered into a bedroom closet; and Coronel was ordered into a back room. The men then robbed Witte and the Perfecto-Pasquel brothers of their money and bank cards. Wright forced Witte at gunpoint to drive to a bank to withdraw money from an ATM. When Witte was unable to withdraw money, Wright became angry and ordered her from the car and drove away. Walker and his accomplices forced Coronel to disrobe and kneel on the bed. The men fled when they heard police sirens in the apartment complex.

Police apprehended Walker, Knight, and Ellis, and located a .38 caliber revolver, a .45 caliber revolver, and a BB gun that had been discarded nearby. A search of Walker's person revealed that he had the wallet and driver's license of one of the victims.

On February 22, 2007, the State charged Walker with the following offenses: one count of class A felony burglary;³ one count of class B felony burglary;⁴ four counts of class B felony robbery; and five counts of class B felony criminal confinement. On April 17, 2008, Walker pled guilty to all eleven offenses without the benefit of a plea agreement. On May 23, 2008, the trial court conducted a sentencing hearing, wherein the trial court imposed sentence as follows: thirty years for count I burglary, a class A felony;

³ I.C. § 35-43-2-1.

⁴ I. C. § 35-42-5-1.

ten years for count II burglary, a class B felony; count III, criminal confinement, a class B felony, merged into count I; six years for count IV burglary, a class B felony; six years for counts V and VII class B felony robbery; count VIII criminal confinement, a class B felony merged into count V; count IX criminal confinement, a class B felony, merged into count VI; ten years for count X criminal confinement, a class B felony; and six years for count XI criminal confinement, a class B felony. Counts I and II were ordered served concurrently, and counts I, IV, V, X, and XI were ordered served consecutively, for an aggregate sentence of seventy years. Walker now appeals.

DECISION

Walker argues that the trial court abused its discretion when it imposed a seventy-year sentence. Specifically, he challenges the trial court's imposition of consecutive sentences and argues that his sentence is inappropriate.

1. Imposition of Consecutive Sentences

Walker acknowledges that “[n]one of his sentences were enhanced beyond the advisory term,” but argues that “an aggregate executed” sentence of forty-four years represents a more appropriate sentence than the seventy year sentence imposed by the trial court. Walker’s Br. at 16. He urges us to revise his sentence accordingly.

Walker’s argument on this issue is comprised entirely of references to the nature of the offenses and his character – the standard employed under Indiana Rule of Appellate Procedure 7(B), which applies to inappropriate sentencing claims. He does not directly present or develop any argument regarding the trial court’s imposition of

consecutive sentences, i.e., that the multiple offenses constitute a single episode of criminal conduct or even that the trial court failed to state its reasons for imposing consecutive sentences. Thus, we conclude that he has failed to present a cogent argument in support of this claim and has, therefore, waived the issue. *See* Ind. App. Rule 46(A)(8)(a).

2. Inappropriate Sentence

Inasmuch as Walker argues that his sentence is inappropriate based on the nature of the offense and his character, pursuant to Indiana Appellate Rule 7(B), we disagree.

Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, we observe that Walker and his accomplices stole pass keys, then armed themselves with firearms, and broke into the victims' apartments while they were asleep. Once inside Main-Ward's apartment, they bound and gagged her, stole her possessions, and for no apparent reason, shot her repeatedly with a pellet/BB gun. They also shot and killed her goldfish. They then broke into the apartment of the Perfecto-Pasquel brothers and Ms. Coronel, placed the occupants in

separate rooms, and robbed three of the four persons of their money and/or bank cards. They also subjected Coronel to the extreme indignity of disrobing and kneeling on a bed. Lastly, Witte was forced, at gun-point, to accompany Wright to an ATM in order to withdraw money. When Walker was apprehended, Witte's wallet and driver's license were found in his pocket.

As to Walker's good character, we are not persuaded by what occurred at sentencing whereby he tearfully read a lengthy statement, wherein he apologized to the victims. Specifically, he apologized to Main-Ward for the "cruelty" that she endured; to Witte for the "heart wrenching fear [he] put [her] in"; to Coronel for "degrad[ing]" her; and to the Perfecto-Pasquel brothers for "bestowing [upon them] the greatest evil known to man . . . the evil of not being able to protect the ones [they] love[]." (Tr. 12, 13). He went on to admit his "immaturity," "stupid[ity]," and the "vicious[ness]" of his actions, and begged the trial court to show mercy, citing his acceptance of responsibility and his decision to enter into a plea agreement. (Tr. 15, 16).

Afterwards, the prosecutor cautioned the trial court not to be deceived by Walker's apparent remorse, insisting that Walker was "not magnanimously accepting responsibility." (Tr. 26). The prosecutor then informed the trial court that during his incarceration, Walker had attempted, unsuccessfully, to smuggle a letter to his fellow accomplice, Knight. In the letter, which was intercepted by jail staff, Walker wrote Knight that he (Walker) was the only one who had a chance of beating the charges, and

urged Knight to testify that was forced to participate in the crime spree under duress, after Knight and Ellis threatened to kill him.

For a clear sense of Walker's character, we need only to look at the "cruel," "vicious," and "depraved" treatment suffered by the victims in this case. (Tr. 12, 16). Considering the nature of the offenses and the character of the offender, we cannot say that Walker's sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.